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January 15, 1993

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: ET Docket No. 92-28

Dear Mr. Toth:

On behalf of TRW Inc., I would like to bring to your attention a misimpression your client, CELSAT Inc., created in its initial comments in the FCC's rulemaking proceeding in ET Docket No. 92-28, and repeated in its recent reply comments in the same proceeding. Specifically, CELSAT asserted in its December 2, 1992 comments that "[n]ot a single party opposed CELSAT's petition for reconsideration" of the FCC's decision to dismiss the portion of CELSAT's rulemaking proposal that would allow CELSAT's suggested satellite system to operate in the RDSS bands. CELSAT made the same assertion in its reply comments, claiming that it "timely filed a petition for reconsideration of the Commission's September Notice of Proposed Rule Making and tentative Decision in this proceeding and not a single party opposed it."

TRW is both perplexed and perturbed by CELSAT's continuing claim that no one has opposed CELSAT's petition for reconsideration. As you should be aware, TRW did, in fact, oppose CELSAT's petition for reconsideration. On October 28, 1992, TRW filed a motion to dismiss CELSAT's petition for reconsideration, demonstrating in detail the reasons why the petition was ineligible for Commission consideration. TRW duly served its motion -- an additional copy of which is enclosed -- on you in your capacity as counsel for CELSAT.

Given the fact that TRW clearly "opposed" CELSAT's petition, CELSAT's comments and reply comments in ET Docket No. 92-28 create an impression as to the status of your petition for

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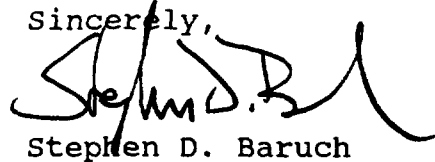
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LEVENTHAL, SENTER & LERMAN

Victor J. Toth, Esq.  
January 15, 1993  
Page - 2 -

rulemaking that simply is untrue. You should move expeditiously to set the record straight.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen D. Baruch", with a stylized flourish extending from the end.

Stephen D. Baruch

SDB:kbs

Enclosure

cc (w/encl.): Ms. Donna R. Searcy (For File Stamp)

cc (w/o encl.): Attached Service List

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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OCT 28 1992  
FEDERAL COMMUNICATIONS COMMISSION  
SECRETARY

In the Matter of )

Amendment of Section 2.106 of )  
the Commission's Rules to )  
Allocate the 1610-1626.5 MHz )  
and the 2483.5-2500 MHz Bands )  
for Use by the Mobile-Satellite )  
Service, Including Non- )  
geostationary Satellites. )

ET Docket No. 92-28  
RM-7771 PP-29 PP-32  
RM-7773 PP-30 PP-33  
RM-7805 PP-31  
RM-7806

To: The Commission

**MOTION TO DISMISS CELSAT, INC.'S  
PETITION FOR RECONSIDERATION**

TRW Inc. ("TRW"), by its attorneys, hereby respectfully requests that the Commission dismiss the Petition for Reconsideration of the Commission's Notice of Proposed Rule Making and Tentative Decision in the above-captioned proceeding<sup>1/</sup> that was filed by CELSAT, Inc. ("CELSAT").

In the NPRMTD, the Commission dismissed CELSAT's request to use the 1610-1626.5 MHz and 2483.5-2500 MHz bands ("RDSS bands") for a new hybrid space and terrestrial personal communications service as being inconsistent with the frequency

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<sup>1/</sup> Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile Satellite Service, Including Non-geostationary Satellites, FCC 92-358 (released September 4, 1992) ("NPRMTD").

allocation decisions made at the 1992 World Administrative Radio Conference ("WARC-92") (see NPRMTD, FCC 92-358, slip op. at 7 n.15).<sup>2/</sup> The Commission, however, expressly deferred CELSAT's alternative proposal -- which requests the use of the 2110-2129 MHz and 2410-2428 MHz bands ("Band-A frequencies") for its hybrid system -- for future consideration in a separate proceeding. Id.

In its petition, CELSAT requests that the Commission reconsider the NPRMTD "pursuant to Section 1.429 of this Commission's rules." CELSAT Petition at 1. As explained below, however, the Commission's rules make clear that reconsideration petitions against interlocutory actions are not permitted in rulemaking proceedings. In addition, the Commission's deferral of consideration of one of the two spectrum alternatives presented by CELSAT also renders the action non-final.

Section 1.429(a) of the Commission's rules states in pertinent part that "[a]ny interested person may petition for reconsideration of a final action in a proceeding conducted under this subpart (see §§1.407 and 1.425)." 47 C.F.R. § 1.429(a) (emphasis added). The Commission has confirmed this threshold limitation. In its WARC-79 Report and Order, a rulemaking proceeding to bring a radio service into conformance with the Final Acts of the 1979 World Administrative Radio Conference, the Commission specifically stated that "[a] Notice of Proposed Rule

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<sup>2/</sup> The Commission noted that the terrestrial component of CELSAT's proposed system would be inconsistent with the international allocations for the RDSS bands. NPRMTD, FCC 92-358, slip op. at 7 n.15.



Making does not constitute a final action in a rule making proceeding."<sup>3/</sup> It went on to reject a petition for partial reconsideration that had been filed against one notice of proposed rule making in that proceeding, stating that "[a] Petition for Reconsideration does not properly lie against a Notice of Proposed Rule Making."<sup>4/</sup> Thus, the NPRMTD, as an interlocutory action in this proceeding, is not a proper subject of a petition for reconsideration.

In addition, CELSAT's petition for reconsideration is rendered fatally defective by the fact that the Commission did not dismiss, but rather only postponed consideration of, CELSAT's alternative request to use the "Band-A" frequencies for its hybrid system. See NPRMTD at 7. The fact that CELSAT's alternative request is due to be considered by the Commission in a separate proceeding precludes CELSAT from seeking reconsideration under Section 1.429(a) of the rules at this time.

The Commission has indicated that a deferral or postponement of a petitioner's proposal or request does not constitute a "final action" pursuant to Section 1.429(a) of the

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<sup>3/</sup> Id. See also Notice of Proposed Rule Making to Amend Part 31 Uniform System of Accounts, Report and Order, 2 FCC Rcd 3241, 3247 (1987) (the Commission denied a petition that sought reconsideration of a notice of proposed rule making on grounds that reconsideration of interlocutory rulemaking actions is barred by Section 1.429(a)).

<sup>4/</sup> Amendment of Part 97 of the Commission's Rules to Implement the Final Acts of the World Administrative Radio Conference, Geneva, 1979, 59 R.R.2d 970, 970 (1986) ("WARC-79 Report and Order").

rules. For example, in Modification of FM Broadcast Station Rules, 78 F.C.C.2d 1232 (1980), the Commission dismissed the National Telecommunications and Information Administration's ("NTIA") Petition for Reconsideration and Further Notice of Proposed Rule Making, noting that the NPRM in BC Docket No. 80-90, against which the petition for reconsideration was filed, merely postponed consideration of NTIA's proposal to use directional antennas in connection with the Commission's assignment of FM channels. Id. at 1233. The Commission emphasized that NTIA's proposal had not been dismissed in connection with the ongoing proceeding (as was claimed by NTIA) and would be considered in a future proceeding. See Id. According to the Commission, deferment of NTIA's proposal did not constitute a final action; thus, NTIA's petition for rule making was deemed to be procedurally improper. Id.

In this connection, CELSAT's petition must be dismissed on the ground that the Commission's deferral of consideration of CELSAT's "Band-A" alternative did not constitute a final action. CELSAT's alternative proposal for its hybrid system is presumably alive and well, as the Commission has indicated its intent to consider the matter in a separate proceeding.


#### CONCLUSION

On the basis of the foregoing, the Commission should find that CELSAT is completely without standing to seek reconsideration of the NPRMTD. Accordingly, TRW respectfully urges the

Commission to dismiss CELSAT's petition without further consideration.

Respectfully submitted,

TRW Inc.

By 

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October 28, 1992

Its Attorneys

CERTIFICATE OF SERVICE

I, Sharon Krantzman, hereby certify that a copy of the foregoing "Motion to Dismiss CELSAT, INC.'S Petition for Reconsideration" was served by first-class mail, postage prepaid, this 28th day of October 1992, on the following persons:

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